

Supreme Court, U.S.  
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In the Supreme Court of the United States  
OCTOBER TERM, 1996

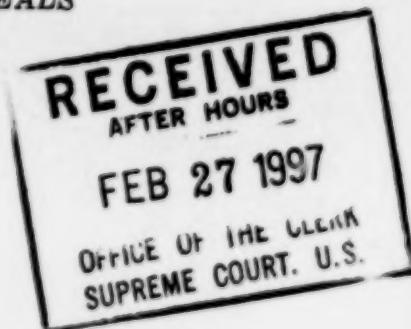
UNITED STATES OF AMERICA, PETITIONER

v.

ROBERT E. HYDE

ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JOINT APPENDIX



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PETITION FOR WRIT OF CERTIORARI FILED OCTOBER 28, 1996  
CERTIORARI GRANTED JANUARY 17, 1997

82 pp

## TABLE OF CONTENTS \*

Relevant Docket entries, United States Court of Appeals for the Ninth Circuit .....	1
Relevant Docket entries, United States District Court for the Northern District of California .....	2
Indictment .....	5
Application for Permission to Enter Plea of Guilty and Order Accepting Plea .....	14
Plea Agreement .....	21
Reporter's Transcript of Proceedings for November 29, 1993 (Change of Plea Hearing) .....	28
Motion to Withdraw Plea .....	56
Reporter's Transcript of Proceedings for March 15, 1995 (Hearing on Motion to Withdraw Plea) .....	58
Reporter's Transcript of Proceedings for June 2, 1995 (Evidentiary Hearing on Motion to Withdraw Plea) ..	62
Order Denying Motion to Withdraw Guilty Plea .....	66
Judgment .....	75

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\* The opinion of the United States Court of Appeals for the Ninth Circuit is printed in the appendix to the petition for writ of certiorari and has not been reproduced here.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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No. 95-10113

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

ROBERT E. HYDE, DEFENDANT-APPELLANT

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RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
3/10/95	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL AND APLT PRO SE.
4/8/96	ARGUED AND SUBMITTED TO Warren J. FERGUSON, Dorothy W. NELSON, Ferdinand F. FERNANDEZ [95-10113] (mlm)
4/30/96	FILED OPINION: REVERSED and REMANDED (Terminated on the Merits after Oral Hearing; Reversed and Remanded; Written, Signed, Published. Warren J. FERGUSON, concurring; Dorothy W. NELSON; Ferdinand F. FERNANDEZ, author.) FILED AND JUDGMENT. [95-10113] (dl)
7/29/96	Filed order and amended opinion (Judges Warren J. FERGUSON, Dorothy W. NELSON, Ferdinand F. FERNANDEZ, author) (Orig. opinion id: [2998234-1]) denying petition for en banc rehearing [3027331-1] REVERSED & REMANDED [95-10113] (dg)

(1)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. Cr. 91-0672-SBA

UNITED STATES OF AMERICA, PLAINTIFF

v.

ELMER ROBERT HYDE, DEFENDANT

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
12/13/91	1 INDICTMENT by AUSA Joel Levin. Counts filed against Elmer Robert Hyde (1) count(s) 1, 2, 3, 4-5, 6-8 (rhw)
	* * * * *
11/29/93	104 MINUTES: before Judge Saundra B. Armstrong; Elmer Robert Hyde enters guilty plea; Elmer Robert Hyde (1) count(s) 1, 2-3, 4, sentencing hearing will be held at 1:30 p.m. on 2/8/94 as to defendant Elmer Robert Hyde (C/R: Diane Skillman) (rhw) [Entry date 11/30/93]
11/29/93	105 APPLICATION TO PLEAD GUILTY filed by Elmer Robert Hyde before Judge Saundra B. Armstrong (rhw)
11/29/93	106 PLEA Agreement as to Elmer Robert Hyde (rhw) [Entry date 11/30/93]
	* * * * *

DATE	PROCEEDINGS
1/10/94	115 MOTION before Judge Saundra B. Armstrong to withdraw guilty plea given under "choice of evil" duress by defendant Elmer Robert Hyde (rhw) [Entry date 01/11/94]
	* * * * *
2/2/94	121 ORDER by Judge Saundra B. Armstrong sentencing hearing continued from 2/8/94 to 1:30 p.m. on 4/5/94 as to defendant Elmer Robert Hyde (rhw) [Entry date 02/03/94]
	* * * * *
2/9/94	123 ORDER by Judge Saundra B. Armstrong setting hearing on motion to withdraw guilty plea given under "choice of evil" duress by defendant Elmer Robert Hyde [116-1] for 1:30 p.m. on 3/15/94; Government's opposition to motion due 3/8/94 (rhw) [Entry date 02/10/94]
	* * * * *
3/15/94	133 MINUTES: before Judge Saundra B. Armstrong; denying motion to dismiss for prejudicial delay by defendant Elmer Robert Hyde [128-1], granting motion to remove assistant counsel, Michael Stepanian for sexual harassment and other acts of moral turpitude by defendant Elmer Robert Hyde [122-1], withdrawing advisory attorney Michael Stepanian for Elmer Robert Hyde and defendant pro se, sentencing hearing will be held at 1:30 p.m. on 4/26/94 as to defendant Elmer Robert Hyde (C/R: Larry White) (rhw) [Entry date 03/16/94]
	* * * * *
6/1/94	149 MINUTES: Evidentiary hearing held before Judge Saundra B. Armstrong. Motion under submission, as to defendant Elmer Robert Hyde. (C/R: Earl Pline) (rl)
	* * * * *

DATE	PROCEEDINGS
7/19/94 152	ORDER by Judge Saundra B. Armstrong denying motion to withdraw guilty plea given under "choice of evil" duress by defendant Elmer Robert Hyde [115-1] as to Defendant Elmer Robert Hyde, denying motion to withdraw guilty plea given under "choice of evil" duress by defendant Elmer Robert Hyde [116-1] as to Defendant Elmer Robert Hyde; sentencing hearing will be held at 1:30 p.m. on 10/4/94 as to Defendant Elmer Robert Hyde (rhw) [Entry date 07/20/94]
	* * * * *
2/28/95 166	MINUTES: before Judge Saundra B. Armstrong; sentencing Elmer Robert Hyde (1) count(s) 1, 2 -3, 4. sentenced to 30 months BOP to run concurrently; 3 years supervised release, dismissing counts Elmer Robert Hyde (1) count(s) 5, 6 -8. dismissed on government's motion
3/6/95 167	NOTICE OF APPEAL by defendant Elmer Robert Hyde from Dist. Court decision judgment; Not Paid; and motion for assignment of counsel as an indigent person (kc) [Entry date 03/07/95]
3/7/95 168	JUDGMENT and Commitment issued as to Elmer Robert Hyde; Judge Saundra B. Armstrong

[Filed Dec. 13, 1991]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Criminal No. Cr. 91-0682-SBA

UNITED STATES OF AMERICA, PLAINTIFF

v.

ELMER ROBERT HYDE, a/k/a ELMER JAMES HYDE,  
a/k/a BOB HYDE, DEFENDANT

## INDICTMENT

## COUNT ONE: (18 U.S.C. §§ 1341 and 2(b))

The Grand Jury charges: THAT

1. Beginning on or about the first day of November, 1987 and continuing thereafter until approximately the thirtieth day of September, 1988, in the City and County of San Francisco, State and Northern District of California and elsewhere,

ELMER ROBERT HYDE, a/k/a  
ELMER JAMES HYDE, a/k/a  
BOB HYDE,

defendant herein, devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises. Defendant HYDE conducted said scheme and artifice to defraud by holding himself out as a successful loan broker affiliated with an established money brokering business, Money Brokers Association ("MBA") and capable of securing loans from financing sources that had ample funds available, whereas, in truth

and fact, MBA was actually a shell company that he had set up for the purpose of collecting front end fees, and contrary to the representations made by HYDE, MBA had no track record of success in funding loans or providing any other legitimate services. By virtue of the scheme to defraud and the false pretenses and representations made in furtherance of it, HYDE obtained money both from individuals soliciting loan applicants for him ("co-brokers") and from loan applicants, without securing loans for the loan applicants or refunding their deposits, in spite of representations that said deposits were fully refundable.

2. It was a part of the scheme and artifice to defraud that beginning in the fall of 1987, defendant HYDE set up a residence in San Ramon, California and held himself out as being the president of MBA. HYDE then represented and caused to be represented, both orally and in writing, that MBA had been founded over forty years before and that it had been an enormously successful business, having placed thousands of business loans totaling several billion dollars. HYDE further represented and caused to be represented that MBA was the largest financial broker in the world.

3. It was a further part of the scheme and artifice to defraud that on or about December 24, 1987, in order to lend an aura of respectability to MBA, defendant HYDE submitted an application and a \$125 dues payment to an organization called the International Society of Financiers, which then enabled HYDE to represent MBA as being a "certified international financier."

4. It was a further part of the scheme and artifice to defraud that defendant HYDE secured the services of Neil Elder to act as his spokesman in promoting and running MBA. One of Elder's functions was to do a videotaped sales pitch to promote MBA to individuals interested in being sales associates or "co-brokers" for MBA. In said videotape, and in other representations

that HYDE made or caused to be made, prospective co-brokers were lured by claims of very high salaries or commissions that could be made, with very little effort, by working for MBA. Prospective co-brokers were misled by claims that they could earn as much as \$100,000 per month for as little as five or six hours of work and that they could earn these huge salaries while spending most of their time in leisure activities such as golf or tennis.

5. It was a further part of the scheme and artifice to defraud that in late 1987 and early 1988, HYDE placed or caused to be placed in newspapers in northern California ads soliciting individuals who wanted to make a lot of money as co-broker's and individuals who wanted financing for businesses. In response to inquiries, HYDE represented, orally and in writing, that a business called "Bancorp Ltd.," headed by "Nathan Silverman," had been funding MBA projects since 1946 and that MBA had access to thousands of investment sources worldwide. In truth and fact, as defendant HYDE well knew, there was no Bancorp Ltd. or Nathan Silverman providing funding sources to MBA.

6. It was a further part of the scheme and artifice to defraud that as a result of misrepresentation that HYDE made or caused to be made, a number of individuals signed agreements to act as co-brokers for MBA and these co-brokers proceeded to prepare loan packages based on information provided to them by prospective borrowers. The co-brokers also collected fees from prospective borrowers and in accordance with the system set up by HYDE, these fees were represented to be fully refundable.

7. It was a further part of the scheme and artifice to defraud that HYDE paid the co-brokers, or arranged for them to be paid, as an advance on their expected commissions, weekly salaries or stipends that depended on the amount of their respective monetary contributions to MBA. The loan packages that were assembled by the

co-brokers were given to defendant HYDE who represented that he was taking them to Southern California to arrange for funding. Defendant HYDE further represented that he was taking over the operations of Bancorp because Nathan Silverman had suffered a heart attack.

8. It was a further part of the scheme and artifice to defraud that in early March, 1988, defendant HYDE falsely represented that loan commitments had been on a number of the loan packages which he had taken to Southern California and that he would send the necessary paperwork to Neil Elder, who was serving as the head of the MBA office in Northern California. On the basis of defendant HYDE's representations, Elder prepared and sent commitment letters to a number of prospective borrowers, indicating that their requested loans had been approved. Contrary to the claims in these letters, HYDE secured no financing for any of the loan packages, failed to refund the loan application fees and merely used the fees collected for expenses or his personal benefit.

9. It was a further part of the scheme and artifice to defraud that in early March 1988, HYDE left California to avoid any complaints or demands against him for failing to fulfill the promises made to co-brokers and loan applicants. Unbeknownst to the co-brokers and loan applicants, HYDE then moved his operation to the New York metropolitan area where he continued to solicit fees and money under the false pretense that he was a legitimate loan broker.

10. On or about the 13th day of January, 1988, in the State and Northern District of California and elsewhere,

ELMER ROBERT HYDE, a/k/a  
ELMER JAMES HYDE, a/k/a  
BOB HYDE,

defendant herein, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered by mail according

to the direction thereon a "Letter of Intent" purportedly signed by Nathan Silverman of Bancorp Limited, and reflecting the supposed approval of a loan to Quinlan Funeral Home, which letter was sent to the aforesaid Quinlan Funeral Home in Orland Park, Illinois.

All in violation of Title 18, United States Code, Sections 1341 and 2(b).

**COUNT TWO: (18 U.S.C. §§ 2315 and 2(b))**

The Grand Jury further charges: **T H A T**

1. All of the allegations of the first count of this indictment except those contained in the tenth paragraph thereof are realleged herein:

2. On or about the 6th day of January, 1988, in the State and Northern District of California and elsewhere,

ELMER ROBERT HYDE, a/k/a  
ELMER JAMES HYDE, a/k/a  
BOB HYDE,

defendant herein, did knowingly receive and possess money of the value of \$5000 or more, to wit, a \$5000 check written on a Citicorp Savings money market account from Illinois payable to Money Brokers Association and signed by William Allard, which check had crossed a State boundary after being unlawfully taken by defendant HYDE or his representatives as a result of false and fraudulent representations that defendant HYDE made or caused others to make as part of the scheme to defraud set forth above.

All in violation of Title 18, United States Code, Sections 2315 and 2(b).

**COUNT THREE: (18 U.S.C. §§ 2315 and 2(b))**

The Grand Jury further charges: **T H A T**

1. All of the allegations of the first count of this indictment except those contained in the tenth paragraph thereof are realleged herein;

2. On or about the 25th day of January, 1988, in the State and Northern District of California and elsewhere,

ELMER ROBERT HYDE, a/k/a  
ELMER JAMES HYDE, a/k/a  
BOB HYDE,

defendant herein, did knowingly receive and possess money of the value of \$5000 or more, to-wit, a \$5000 check written on the account of Rolando M. Fajardo at the NBD F & M Bank in Michigan payable to Money Brokers, which check had crossed a State boundary after being unlawfully taken by defendant HYDE or his representatives as a result of false and fraudulent representations that defendant HYDE made or caused others to make as part of the scheme to defraud set forth above.

All in violation of Title 18, United States Code, Sections 2315 and 2(b).

**COUNT FOUR: (18 U.S.C. §§ 1341 and 2(b))**

The Grand Jury further charges: T H A T

1. All of the allegations of the first count of this indictment except those contained in the tenth paragraph thereof are realleged herein;

2. On or about the 3rd day of February, 1988, in the State and Northern District of California and elsewhere,

ELMER ROBERT HYDE, a/k/a  
ELMER JAMES HYDE, a/k/a  
BOB HYDE,

defendant herein, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered by mail according to the direction thereon a letter and a \$2,500 check from a prospective borrower, TRK-INN Enterprises of Campbell, California, to the office of Money Brokers Association in San Francisco, California.

All in violation of Title 18, United States Code, Sections 1341 and 2(b).

**COUNT FIVE: (18 U.S.C. §§ 1341 and 2(b))**

The Grand Jury further charges: T H A T

1. All of the allegations of the first count of this indictment except those contained in the tenth paragraph thereof are realleged herein;

2. On or about the 3rd day of March, 1988, in the State and Northern District of California and elsewhere,

ELMER ROBERT HYDE, a/k/a  
ELMER JAMES HYDE, a/k/a  
BOB HYDE,

defendant herein, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered by mail according to the direction thereon a letter and a \$2,500 check from a prospective borrower, Auto Arc Industries of San Leandro, California, to the office of Money Brokers Association in San Francisco, California.

All in violation of Title 18, United States Code, Sections 1341 and 2(b).

**COUNT SIX: (18 U.S.C. §§ 1343 and 2(b))**

The Grand Jury further charges: T H A T

1. All of the allegations of the first count of this indictment except those contained in the tenth paragraph thereof are realleged herein;

2. On or about the 4th day of March, 1988, in the State and Northern District of California and elsewhere,

ELMER ROBERT HYDE, a/k/a  
ELMER JAMES HYDE, a/k/a  
BOB HYDE,

defendant herein, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be transmitted by means of wire in interstate commerce from California to Illinois certain signs, signals and sounds constituting a FAX copy of a letter from Money Brokers Association reflecting the supposed approval of a loan application made by Rodger Stone for the financing of a project called the Milwaukee Marine.

All in violation of Title 18, United States Code, Sections 1343 and 2(b).

**COUNT SEVEN: (18 U.S.C. §§ 1343 and 2(b))**

The Grand Jury further charges: **T H A T**

1. All of the allegations of the first count of this indictment except those contained in the tenth paragraph thereof are realleged herein;
2. On or about the 4th day of March, 1988, in the State and Northern District of California and elsewhere,

**ELMER ROBERT HYDE, a/k/a**  
**ELMER JAMES HYDE, a/k/a**  
**BOB HYDE,**

defendant herein, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be transmitted by means of wire in interstate commerce from California to Illinois certain signs, signals and sounds constituting a FAX copy of a letter from Money Brokers Association reflecting the supposed approval of a loan application made by Bill Allard of Illinois for a land investment.

All in violation of Title 18, United States Code, Sections 1343 and 2(b).

**COUNT EIGHT: (18 U.S.C. §§ 1343 and 2(b))**

The Grand Jury further charges: **T H A T**

1. All of the allegations of the first count of this indictment except those contained in the tenth paragraph thereof are realleged herein;
2. On or about the 4th day of March, 1988, in the State and Northern District of California and elsewhere,

**ELMER ROBERT HYDE, a/k/a**  
**ELMER JAMES HYDE, a/k/a**  
**BOB HYDE,**

defendant herein, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be transmitted by means of wire in interstate commerce from California to Illinois certain signs, signals and sounds constituting a FAX copy of a letter from Money Brokers Association reflecting the supposed approval of a loan application made by Romel Fajardo for a condominium development.

All in violation of Title 18, United States Code, Sections 1343 and 2(b).

**DATED: 12-13-91**

**A True Bill.**

**/s/ Patricia C. Anderson**  
**Foreperson**

**/s/ William T. McGivern, Jr.**  
**WILLIAM T. McGIVERN, JR.**  
**United States Attorney**

[Filed Nov. 29, 1993]

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Case No. CR-91-0672 SBA

UNITED STATES OF AMERICA, PLAINTIFF  
vs.

ELMER ROBERT HYDE, DEFENDANT

APPLICATION FOR PERMISSION TO ENTER PLEA  
OF GUILTY AND ORDER ACCEPTING PLEA

(Sentencing Guidelines)

The defendant, under penalty of perjury, declares that the following statements have been read and understood, and that each is true and correct:

1. My full name is Elmer Robert Hyde.

I am 72 years of age.

I have gone to school up to and including 2½ yrs college. I request that all proceedings against me be in my true name.

2. My advisor lawyer's name is MICHAEL STEPANIAN.

3. I have received a copy of the indictment or information before being called upon to plead. I have read the indictment or information, and have discussed it with my lawyer. I fully understand every charge made against me. I understand these charges to be:

18 U.S.C. § 1341 cts one, two, three, four

18 U.S.C. § 2315

4. I have told my lawyer all the facts and circumstances known to me about the charges against me in the

indictment or information. I believe that my lawyer is fully informed on all such matters.

5. I know that the Court must be satisfied that there is a factual basis for a plea of "GUILTY" before my plea can be accepted. I represent to the Court that I did the following acts in connection with the charges made against me in Counts "made false representations about sources of money and knew about it." (In the space provided, the defendant must set out in detail, what he or she did. Attach a separate page if more space is needed.)

6. My lawyer has counseled and advised me on the nature of each charge, on all lesser included charges, and on all possible defenses that I might have in this case.

7. I know that I may plead "NOT GUILTY" to any offense charged against me.

8. I know that if I plead "GUILTY", I am giving up all of the Constitutional rights listed below:

- a. the right to a speedy and public trial by jury;
- b. the right to see and hear all witnesses called to testify against me;
- c. the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor;
- d. the right to the assistance of a lawyer at all stages in the proceedings and if I cannot afford a lawyer, to have the Court appoint one to represent me without cost to me or based upon my ability to pay;
- e. the right to take the witness stand at my sole option and, if I do not take the witness stand, no inference of guilty may be drawn from such a failure;
- f. the right against self-incrimination;
- g. the right to appeal from an adverse judgment.

9. I know that if I plead "GUILTY", there will be no trial either before a judge or jury.

10. I know that a plea of "GUILTY" will result in my conviction and that the Court may impose the same punishment as if I had pled "NOT GUILTY", stood trial and been convicted by a jury.

11. My lawyer has informed me that as to the offense charged in Count or Counts<sup>1</sup> one through eight, the law provides:

- a. that the maximum imprisonment is 30 yrs years.
- b. that the maximum fine is \$1,000,000 special assessment.
- c. that the statute which fixes the punishment for this offense requires a mandatory minimum penalty of \_\_\_\_\_
- d. that the Court may order a term of supervised release to follow any term of imprisonment imposed.

12. If at this time I am at least 18 and not more than 26 years of age, I know that the Court may sentence me under the provisions of the Youth Corrections Act or as a Young Adult Offender for an indeterminate sentence (Title 18 U.S.C. Sec. 5010(b)), which may require me to spend as long as six (6) years in a penal institution, even though the punishment for the offense otherwise provided by law may be less.

13. (Strike if inapplicable) A special parole term of — years. I understand that if a special parole term is mentioned, it refers to a term which may be for any period, but not less than the period stated; if the terms and conditions of the special parole are violated, the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time spent on special parole; a person whose special parole term has been revoked may be required to serve all or part of the

<sup>1</sup> If more than one count, enter information for each count on a separate page.

remainder of the new term of imprisonment; and that a special parole is in addition to, and not in lieu of, any other parole provided by law.

14. I understand that I may be required to make restitution of any loss I have caused to any victim of my offense(s), and that I will be assessed \$50.00 for each felony and \$25.00 for each misdemeanor of which I shall be convicted.

15. I understand that under the provisions of certain criminal statutes, my property may be forfeited to the United States. I have been advised by my attorney of whether, and to what extent, property may be subject to forfeiture.

16. If I am on probation or parole in this case or any other Court, I know that by pleading guilty in this case, my probation or parole may be revoked, and I may be required to serve time in that case, which may be consecutive to, that is, in addition to, any sentence imposed upon me in this case.

17. I declare that no officer or agent of any branch of government (Federal, State or Local) has promised or suggested that I will receive a lighter sentence or probation, or any other form of leniency if I plead "GUILTY", except as listed below. If anyone else has made such a promise or suggestion, except as noted below, I know that the person had no authority to do so. (State any promises or concessions made to the defendant or his attorney.)

#### Plea Agreement

18. I know that the sentence I will receive is solely a matter to be decided by the Judge. I know that the Judge will use the Sentencing Guidelines in deciding what sentence to impose. My lawyer has explained the Sentencing Guidelines to me.

19. I know that if a recommendation is made by the Government in this case as to the sentence to be imposed, that the Judge is not bound to accept this recommenda-

tion, and that I do not have the right to withdraw my plea of guilty if the Judge does not accept the recommendation.

20. I consent to an immediate pre-sentence investigation by the Probation Department, and consent to a review of my pre-sentence report by the Judge.

21. I am satisfied that my lawyer has done all that a lawyer could do to counsel and assist me, and that I am satisfied with the advice and help my lawyer has given me.

22. I know that the Court will not permit anyone to plead "GUILTY" who maintains that he/she is innocent and, with that in mind, and because I am "GUILTY" and respectfully request the Court to accept my plea of "GUILTY" and to have the Clerk enter my plea of "GUILTY" as follows:

(The defendant's plea of "GUILTY" and "NOT GUILTY" to each offense should be entered.)

Guilty count one: 18 USC 1341 and 2(b)

Guilty count two: 18 USC 2315(b)

Guilty count three: 18 USC 2315(b)

Guilty count four: 18 USC 2315 2(b)

23. I do not believe that I am innocent; I wish to plead "GUILTY" because I am guilty.

24. My mind is clear. I am not under the influence of alcohol or drugs, and I am not under a doctor's care. The only drugs, medicines or pills that I have taken within the past seven days are: (If none, so state.)

Nitro glycerine

[Illegible] Pill Anti-Biotics

25. My decision to plead "GUILTY" has not been forced or coerced by any threats or compulsion, direct or indirect, to or upon me or any other person.

26. I OFFER MY PLEA OF "GUILTY" FREELY AND VOLUNTARILY AND OF MY OWN ACCORD

AND WITH FULL UNDERSTANDING OF ALL THE MATTERS SET FORTH IN THE INDICTMENT OR INFORMATION AND IN THIS APPLICATION AND IN THE CERTIFICATE OF MY LAWYER WHICH IS ATTACHED TO THIS APPLICATION, AND I REQUEST THAT THE COURT ACCEPT MY PLEA OR PLEAS OF "GUILTY."

Signed and sworn to be me in open Court in the presence of my attorney, this 29th day of Nov., 1993.

/s/ Bob Hyde  
Defendant

[Certificate of Counsel Omitted in Printing]

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted in Printing]

**ORDER ACCEPTING PLEA**

I FIND THAT:

1. The defendant enters this plea of guilty freely and voluntarily, and not out of ignorance, inadvertence, fear or coercion;
2. The defendant understands and knowingly, freely and voluntarily waives his/her Constitutional rights;
3. The defendant freely and voluntarily executed his/her Application for Permission to Enter a Plea of Guilty, and fully understands its contents;
4. The defendant has admitted the essential elements of the crime charged.

IT IS THEREFORE ORDERED that the defendant's plea of "GUILTY" be accepted and entered as prayed for in the Application for Permission to Enter a Plea of Guilty and as recommended in the certificate signed by his/her attorney.

Done in open Court this 29th day of November, 1993.

/s/ Saundra Brown Armstrong  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

[Certificate of Service Omitted in Printing]

[Filed Nov. 29, 1993]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted in Printing]

**PLEA AGREEMENT**

Plaintiff, the United States of America, by and through his counsel, Michael J. Yamaguchi, United States Attorney for the Northern District of California, and Joel R. Levin, Assistant United States Attorney for the Northern District of California; and the defendant, Elmer Robert Hyde, pro se, hereby enter into the following agreement pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure. The defendant, at his own request, and after being fully informed of his right to appointed counsel at no expense to him, has chosen to waive his right to counsel.

1. The defendant will plead guilty to Counts one through four of the Indictment, charging him with mail fraud in violation of 18 U.S.C. § 1341 (counts one and four) and receipt of property of a value of at least \$5000 which had crossed a state boundary after being taken by fraud (counts two and three) in violation of 18 U.S.C. § 2315. The government agrees to move to dismiss Counts five through eight of the Indictment. The defendant is pleading guilty because he is guilty, and acknowledges, as charged in the Indictment, that between approximately November of 1987 and September of 1988, he devised and intended to devise a scheme and artifice to obtain money and property by means of fraudulent pretenses, representations and promises and that the mailings specified in Counts one and four of the indictment were

made or caused to be made in furtherance of the scheme, and that the \$5000 checks referenced in counts 2 and 3 were knowingly received by him in California after having been taken by fraud in another state.

2. The defendant understands that Counts one and four of the Indictment each carry the following penalty: a maximum penalty of five years in imprisonment, a \$250,000 fine, a \$50 special assessment, a period of not more than three years supervised release to follow any sentence of imprisonment, and restitution. The defendant further understands that Counts two and three of the Indictment each carry the following penalty: a maximum penalty of ten years imprisonment, a \$250,000 fine, a \$50 special assessment, a period of not more than three years supervised release to follow any sentence of imprisonment, and restitution. The defendant understands that the maximum penalty he faces for all four counts to which his pleading is a total of thirty years imprisonment, a \$1,000,000 fine, a \$200 special assessment, a period of not more than twelve years supervised release to follow any sentence of imprisonment, and restitution. The defendant further understands that he shall not be eligible for parole during any term of imprisonment imposed. The defendant acknowledges that the sentence to be imposed is within the sole discretion of the Court.

3. In exchange for the defendant's guilty plea to Count one, the government agrees that no further charges will be brought against the defendant for his operation of or involvement in Money Brokers Association. The government also agrees that no further charges will be brought against the defendant for his operation of or involvement in Financial Network Services (FNS) and/or International Financial Services (IFS) in 1987-1990. The government further agrees that no charges shall be brought against the defendant for any false statements that he made to the Social Security Administration in applying

for Supplemental Security Income ("SSI") payments in 1992.

4. The defendant acknowledges that he had had all of his rights explained to him and expressly recognizes that he has the following rights:

- a. The right to plead not guilty and persist in that plea.
- b. The right to a speedy and public jury trial.
- c. The right to assistance of counsel at that trial and in any subsequent appeal.
- d. The right to remain silent at trial.
- e. The right to testify at trial if he wishes.
- f. The right to confront and cross-examine government witnesses.
- g. The right to present evidence and/or witnesses in his own behalf.
- h. The right to compulsory process of the court.
- i. The right to a unanimous guilty verdict.

The defendant further understands that he waives each and every one of the above rights by pleading guilty pursuant to this Plea Agreement, including his right to appeal a finding of guilt following his guilty plea, and it is his knowing and voluntary intention to do so. Defendant further acknowledges that if his guilty plea is accepted there will not be a trial of any kind.

5. The defendant acknowledges that the sentence to be imposed for this offense is governed by the Sentencing Guidelines (the "Guidelines") as promulgated by the Sentencing Commission under the Sentencing Reform Act of 1984. The parties stipulate, subject to the qualification in paragraph 6 below, that the defendant's offense level, under § 2F1.1, should include the net loss sustained in

the operation of Money Brokers Association, Financial Network Services and International Financial Services. The parties further stipulate that for purposes of §§ 1B1.3, 2F1.1 and 3D1.2 of the Guidelines, that the defendant's participation in Money Brokers Association, Financial Network Services and International Financial Services constituted a common scheme or plan and that such conduct should be "grouped" under § 3D1.2. The parties agree that the Guidelines in effect prior to November 1, 1989 govern this case and that under those Guidelines, the defendant's base offense level, under § 2F1.1, would be 6, with a 7 level increase because the amount of the loss was in the range of \$200,001-\$500,000. The parties further agree that a two level increase is warranted under § 2F1.1(b)(2) because the defendant's offense involved a scheme to defraud more than one victim. The parties further agree that only a two level increase is warranted under § 3B1.1 because the defendant was an organizer, leader, manager or supervisor in the criminal activity, but the activity did not involve five or more "criminally responsible" participants. Based on the foregoing calculations, the parties agree that the defendant's adjusted offense level is 17.

6. The parties agree that the sentence imposed in this case should include full restitution of the losses caused by the defendant in committing the Money Brokers Association, Financial Network Services and International Financial Services schemes. The government and the defendant agree that for purposes of restitution and for purposes of the Guideline calculation, the defendant is only responsible for payments to Money Brokers Association that were dated or deposited on or before March 13, 1988. The defendant and the government further agree that for purposes of restitution and for purposes of the Guideline calculation, the defendant is responsible for the net amount taken in by Financial Network Services and International Financial Services.

The defendant acknowledges that he has thoroughly and adequately discussed with his advisory counsel, Michael Stepanian, the effect of the Guidelines with respect to the entry of his guilty pleas.

7. This agreement is not binding upon the district court judge or the probation office. The district court will be free to make its own determinations pursuant to the Guidelines as to the appropriate sentence to be imposed. The defendant understands that the final decision as to which Guidelines apply rests with the court.

8. The defendant acknowledges that his advisory counsel has advised him of the nature of the charges, his possible defenses to the charges and the nature and range of possible sentences. The defendant is satisfied with the advice and assistance that his advisory counsel has provided to him.

9. The defendant specifically agrees that:

(a) A special assessment of \$200 will be imposed as part of the sentence. The defendant agrees to pay that amount at or before the time of sentencing.

(b) The defendant waives his right to appeal any sentence that is within or below the guideline range of 27-33 months.

10. The defendant is entering his guilty plea freely and voluntarily, and not as the result of force, threats, assurances, or promises other than the promises contained in this agreement.

11. In signing this agreement, the defendant is not under the influence of any drug, medication, liquor, intoxicant or depressant, and is fully capable of understanding the terms and conditions of his plea agreement.

12. All promises here made by each party are made dependent on full performance of the promises made by the other party. Any commitment regarding the United States' sentencing recommendation applies only to the sentencing upon this Indictment and does not apply, for example, for any future proceedings concerning an alleged

violation of probation, violation of parole or supervised release.

13. If the defendant commits any crimes, violates any of the conditions of his release, or violates any term of this agreement between signing this agreement and the date of sentencing, or fails to appear for sentencing, the United States will be free to prosecute any and all criminal charges, including charges for any new offenses. The United States also will be free to recommend at sentencing on the charges to which the defendant has pleaded guilty, a sentence higher than that contemplated by this agreement. Whether the government pursues either or both of the alternative courses, the defendant will not be free to withdraw his guilty plea entered pursuant to this plea agreement.

14. The defendant agrees that if any applicable provision of the Sentencing Guidelines changes after entry of this plea agreement that any request by the defendant to be sentenced pursuant to those changed guidelines will make this agreement voidable by the government. In such circumstances, the government may charge, reinstate or otherwise pursue any and all criminal charges which could have been brought but for this plea agreement.

15. This agreement constitutes all the terms of the plea bargain between the government and the defendant, and the government has made no other representations to the defendant or his attorney.

DATED: 11/29/93

Respectfully submitted,

**MICHAEL J. YAMAGUCHI**  
United States Attorney

/s/ **Joel R. Levin**  
**JOEL R. LEVIN**  
Assistant United States Attorney

I have consulted with my advisory counsel and fully understand all my rights with respect to the offenses charged in the Indictment. Further, I have consulted with my advisory counsel and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my advisory counsel. I understand this agreement and I voluntarily agree to it.

DATED: 11/29/93

/s/ **Bob Hyde**  
**ELMER ROBERT HYDE**  
Defendant

I am Elmer Robert Hyde's advisory counsel. I have fully explained to him his rights with respect to the offenses charged in the Indictment. Further, I have reviewed those provisions of the Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with him. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

DATED: 11/29/93

/s/ **Michael Stepanian**  
Advisory Counsel

[Filed Feb. 25, 1994]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted in Printing]

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Monday, November 29, 1993

\* \* \* \*

[2] THE CLERK: Calling Criminal 91-0672 U.S.A. versus Elmer Robert Hyde.

MR. LEVIN: Good morning, Your Honor, Joel Levin for the United States.

MS. BOERSCH: Martha Boersch also for the United States.

THE COURT: Good morning.

DEFENDANT HYDE: Good morning, Your Honor, ladies, Bob Hyde for the defendant pro se.

THE COURT: Good morning.

MR. STEPANIAN: Michael Stepanian as advisory counsel, Your Honor.

THE COURT: Good morning.

I am sorry, I didn't get her name?

MS. BOERSCH: Martha Boersch, B-O-E-R-S-C-H.

THE COURT: Who else is seated at—

MR. LEVIN: Sitting with us throughout the trial is . . . will be Special Agent Robert Schenke, S-C-H-E-N-K-E. He's with the FBI. He's the case agent on the case.

THE COURT: This matter is on at this point for trial. We have a few preliminary matters to discuss.

Let me just ask you before we get started with all of this if there is any possibility that this matter can be [3] settled.

MR. LEVIN: Your Honor, we had made an offer to Mr. Hyde last March when he was represented by Mr.

Sheridan, and it was what I considered to be a reasonable offer and we gave him a reasonable deadline, and he was interested.

This morning he has shown some interest in resuming discussions. We have not been able to agree. And we do not believe it would be appropriate for him to discuss with the court the substance of those discussions under Rule 11, or his views of Janet Reno, or his beliefs in the plea bargaining process.

But as I said, we did make an offer to him in March, he rejected that offer, and we have been unable to reach an agreement this morning.

THE COURT: Well, the reason I am asking the question is because I'm certainly amenable to giving you all more time to discuss this rather than embark on a two-to three-week trial if the matter can be resolved short of that. It's 9:15 anyway.

MR. STEPANIAN: Mr. Hyde, Your Honor, pardon me, but Mr. Hyde is prepared to accept the offer which was offered to him with Mr. Sheridan.

In the last . . . the basic difference, and I'll just say it, and I'm not suggesting the court make any opinions with respect to this except for the fact we all want to resolve this [4] matter short of a three-week trial.

The fact of the matter is that Mr. Hyde is prepared to accept the offer which was offered some time ago. Due, after he—after he went through this—after the certain aspects of the plea agreement which is now clarified for him, that is that the court determines his criminal history as an example, that the court determines aspects, and this plea agreement is a suggestion binding on the parties, but the court is the ultimate determination of what he's going to be sentenced to and the interpretation of the guidelines as is reflected from the input from both Mr. Levin, myself and the probation department. I mean, that's the ultimate determination of sentencing is the court.

Mr. Hyde now understands that. Perhaps he didn't at one time. And the fact is that his criminal history, as an example, is determined by the court.

THE COURT: That's correct.

MR. STEPANIAN: Now the only—

THE COURT: What's in the plea agreement is generally the parties' understanding based on what you all have—the information you have.

MR. STEPANIAN: This is true. And the fact of the matter is that the only problem we are having right now is Mr. Hyde is prepared to plead guilty to the original plea agreement but feels he cannot plead to eight counts because he feels in [5] his soul that he is not guilty of several of those counts. That is the basic problem that we have here.

And so, we're there. I mean the—yes, there was a deadline. Yes, he had another attorney when they were discussing it, but we're prepared to plead guilty right now.

And interestingly enough, we went through the suggestions in the plea agreement, and they—there is no suggestion in the plea agreement that we have a problem. In fact, the original plea agreement, save an understanding that the court determines its criminal history, which is not a real difficult concept, although the only problem with criminal history is that was one on parole at the time that the indictment is filed, or at the time the offense is committed. That's the bottom line.

THE COURT: Well, the bottom line is still the same. The court makes those determinations in the final analysis even if there is some dispute that the parties have with respect to the interpretation.

MR. STEPANIAN: If I can sort of grovel around, and sort of try and get some—try to get one count or something instead of eight counts, maybe we can resolve it. I don't know.

And I recognize the fact, Your Honor, that there are witnesses here, Mr. Schenke has been working. We all

have been working very hard. Yesterday, witnesses were being—

[6] THE COURT: Well, I'm certainly willing to give you some time. We don't have enough jurors now anyway so hopefully we will get some more within the next few hours. We don't have enough even to call the first batch.

MR. STEPANIAN: I'll stick around and try to work this out.

THE COURT: If you all think the amount of time, you know, some time would help, I am certainly willing to start this process at ten o'clock instead of—which will give you a little over half an hour.

MR. STEPANIAN: That would be fine, Your Honor.

MR. LEVIN: We are certainly willing to discuss it some more with Mr. Stepanian.

I think the record should reflect though that since we made that offer, we have put an enormous amount of work into this case and there are witnesses here who will be flown in from all over the country, some of whom who are here already.

And for Mr. Hyde to expect us to make the same offer on the morning of trial after we have done that, I think is pretty unreasonable. I just—just so the court understands where we are coming from on that.

MR. STEPANIAN: That is true.

THE COURT: I understand.

MR. STEPANIAN: I don't know about the unreasonableness, but the fact is there are witnesses here.

[7] DEFENDANT HYDE: Your Honor, may I say something please?

THE COURT: Sure.

DEFENDANT HYDE: While Mr. Levin is an excellent attorney, probably one of the best, I don't know what he has against Janet Reno, but since talking to you the last time, if I was ten minutes younger, Your Honor, I would want to go to trial and stick to trial because Janet Reno

our new Attorney General says that Mr. Levin's office here is intractable. She has reversed these decisions and asked them to be more reasonable, to use some sanity in this—let's say the worst possible situation. He has got me pleading guilty to crimes that somebody else committed which he knows and Agent Schenke knows—

THE COURT: I'm going to give you all some time to—

DEFENDANT HYDE: May I say one more thing?

THE COURT: I don't want to get into a discussion about Janet Reno. I'm not privy to those decisions and they don't seem to have any relevance to what I'm to determine this morning.

So my concern at this point is to give you all some time to see if there is some way to resolve this reasonably without expending the necessary two to three weeks of trial if the matter can be resolved short of that. If not, we will start the trial and I will—

[8] MR. STEPANIAN: Also Mr. Hyde would like to say that this form here, the prior form that he was—that he had been before Your Honor, he felt uncomfortable with, but feels that this form he understands that the court has discretion and will use its discretion in determining his final sentence is why he has changed his attitude vis-a-vis the plea agreement.

Am I correct?

DEFENDANT HYDE: Yes.

MR. STEPANIAN: Why don't we sit here for a few minutes.

MR. LEVIN: Your Honor, the one thing that—

THE COURT: Just a second.

(Pause in the proceedings.)

MR. LEVIN: The one thing that I think we also need to establish for the record is to the extent that Mr. Stepanian makes statements, or arguments, or whatever, that

Mr. Hyde is concurring in those. Mr. Hyde represents himself now.

So, I just want Mr. Hyde to be aware that should he disagree with anything that Mr. Stepanian says on his behalf, that he should let us know, advise the court.

THE COURT: I think that's a good point.

DEFENDANT HYDE: I certainly will, Your Honor and Mr. Levin.

THE COURT: Okay.

DEFENDANT HYDE: Thank you very much, Your Honor.

[9] THE COURT: Come back at ten o'clock.

MR. STEPANIAN: Mr. Hyde will be here?

THE COURT: Actually my—the purpose of my recessing was to give you all some time—

MR. STEPANIAN: This would be fine if we can stay here. If the Marshals have no objection.

THE COURT: That's fine.

THE CLERK: All rise.

(Proceeding recessed until 1:20 p.m.)

THE CLERK: Recalling criminal 91-0672 United States versus Elmer Robert Hyde.

MR. LEVIN: Good afternoon, Your Honor, Joel Levin for the United States.

THE COURT: Good afternoon.

DEFENDANT HYDE: Good afternoon, Your Honor, Bob Hyde defendant pro se.

THE COURT: Good afternoon.

MR. STEPANIAN: Good afternoon, Your Honor, Michael Stepanian, advisory counsel.

THE COURT: Okay. Good afternoon.

I understand you all have reached an agreement and Mr. Hyde is still working on the application; is that correct?

MR. STEPANIAN: We are. Mr. Hyde, through me, is finished with the application.

What pills are you taking?

[10] THE COURTS: Why don't you finish that and that will give me a chance to look at the plea agreement.

(Pause in the proceedings.)

THE COURT: The application misstates the charge in Count 4. We have count 4 is 2315 and that should be 1341; is that correct?

It should be 18 U.S.C. 1341.

Okay.

Mr. Hyde, before I accept your guilty plea, I'm required to ask you some questions which you must answer under oath.

So if you would please raise your right hand to be sworn by Madame clerk.

**ELMER ROBERT HYDE, DEFENDANT, SWORN**

THE COURT: Mr. Hyde, you understand that you are now under oath?

DEFENDANT HYDE: I am sorry?

THE COURT: Do you understand that you're under oath?

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: Do you also understand that because you're under oath you must tell the truth?

DEFENDANT HYDE: Yes, Your Honor, I do.

THE COURT: Do you understand that if you fail to tell the truth, or if you provide false statements to the court at this time that the Government may bring additional charges [11] against you which will carry penalties in addition to those that you're currently faced with?

DEFENDANT HYDE: I understand that, Your Honor.

THE COURT: I'm going to ask you some questions to determine whether you are intending to change your plea and whether you—to make sure that you knowingly, voluntarily, and intelligently want to enter a guilty plea.

I'm also going to ask you some questions concerning

the crimes that you're pleading guilty to and you will be required to answer those questions.

If you feel that you would like to consult with your Advisory Counsel at any time prior to answering any of my questions, please feel free to do so.

Defendant Hyde: All right, Your Honor.

THE COURT: If you don't understand a question that I ask you, don't attempt to answer the question, just tell me you don't understand the question and I'll rephrase the question before you are required to answer it. Okay?

Defendant Hyde: Yes, Your Honor.

THE COURT: What is your full name?

DEFENDANT HYDE: Elmer Robert Hyde.

THE COURT: What is your age?

DEFENDANT HYDE: Seventy-two years old, Your Honor.

THE COURT: What is the highest educational level you have achieved?

[12] DEFENDANT HYDE: Approximately two a half years of College.

THE COURT: Can you read and write English?

DEFENDANT HYDE: I am sorry?

THE COURT: Can you read and write English?

DEFENDANT HYDE: Yes, I can, Your Honor.

THE COURT: Prior to coming to court today, have you had any alcoholic beverages?

DEFENDANT HYDE: No, I haven't Your Honor.

THE COURT: Within the past twenty-four hours, have you taken any medications or drugs whether prescribed by a physician or not?

DEFENDANT HYDE: Just some antibiotics and my nitroglycerin for my heart.

THE COURT: You have taken nitroglycerin for your heart approximately what time?

DEFENDANT HYDE: It depends how it feels, Your Honor. It varies.

THE COURT: Within the past twenty-four hours you have taken the nitroglycerin for your heart.

Do you recall what time you took the nitroglycerin?

DEFENDANT HYDE: Approximately an hour ago and about an hour before that, thereabouts.

THE COURT: And you said you have also taken antibiotics. Do you know what antibiotics you have taken?

[13] DEFENDANT HYDE: Just for a cold, Your Honor.

THE COURT: For a cold?

DEFENDANT HYDE: Uh-huh.

THE COURT: Either—you don't know what the antibiotics were?

DEFENDANT HYDE: No, I'm afraid not.

THE COURT: With respect to the nitroglycerin and the antibiotics, are either of those medications interfering at all with your ability to understand what is going on here this afternoon?

Defendant Hyde: Not at all, Your Honor.

THE COURT: Okay. Are there any side effects that you are experiencing or feel as a result of having taken the nitroglycerin or antibiotics?

DEFENDANT HYDE: No, Your Honor.

THE COURT: Are you feeling sick in any way that would prevent you from understanding what is going on here?

DEFENDANT HYDE: No, I am not.

THE COURT: Do you in fact understand what is going on here this afternoon?

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: Do you understand that you have a right to maintain your not guilty plea?

DEFENDANT HYDE: Yes, I do.

THE COURT: AND IF you enter a not guilty plea, you [14] understand you have the right to have a trial?

DEFENDANT HYDE: Yes, Your Honor, I understand that.

THE COURT: Do you further understand that you would have a public trial by a jury composed of twelve citizens of this district.

DEFENDANT HYDE: Yes, Your Honor.

THE COURT: As a matter of fact, that is why we are here today for the jury trial?

DEFENDANT HYDE: Yes. That's right.

THE COURT: At the trial you have a right to have an attorney represent you, either one retained and paid for by you or if you could not afford a lawyer, of course, the court will appoint a lawyer to represent you and the government would bear the expense of the lawyer.

You also understand that you have the right to waive a lawyer and to represent your self at this trial; is that correct?

DEFENDANT HYDE: Yes, that's correct, Your Honor.

THE COURT: At the trial, if we had a trial, the burden would be on the government to prove your guilt beyond a reasonable doubt.

Do you understand that?

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: In order to prove your guilt beyond a reasonable doubt, the government would be required to call [15] witnesses who would appear here and testify in open court.

Do you understand that?

DEFENDANT HYDE: Yes, I do.

THE COURT: Do you also understand that you have a right to see, confront, and to cross-examine each of the government's witnesses?

DEFENDANT HYDE: Yes, Your Honor, I understand that.

THE COURT: During the trial, you also have the constitutional right to remain silent, which means no one

could compel or require you to be a witness against yourself.

Do you understand that?

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: And the fact that you choose to exercise your right to remain silent could not be used against you, and could not be held against you, which means that neither the judge nor the jury trying this case could infer or presume that you were guilty simply because you chose to exercise your right to remain silent.

Do you understand that?

DEFENDANT HYDE: I understand that.

THE COURT: On the other hand, you may choose to call you as a witness, or call other witnesses on your behalf, or introduce such other evidence as permitted by the Federal Rules of Evidence.

Do you understand that?

[16] DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: That's in addition to cross-examining the witnesses that the Government presents against you.

Do you understand that?

DEFENDANT HYDE: Yes, I do.

THE COURT: The fact that you choose to present evidence of any kind still does not alter the burden of proof at trial. The Government always bears the burden of proving your guilt beyond a reasonable doubt on each of the charges brought against you.

Do you understand that?

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: If you had witnesses who had evidence that you feel would be have assistance to you and those witnesses refuse to come voluntarily, you have the right to use the subpoena powers of this court to compel the attendance have witnesses on your behalf.

Do you understand that?

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: Do you understand that by entering a guilty plea you give up your right to have a trial?

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: Do you also understand that if I accept your guilty plea there will in fact be no trial?

DEFENDANT HYDE: That's correct, Your Honor. [17] I understand that.

THE COURT: Has anyone threatened you in any way to make or force you to enter a guilty plea?

DEFENDANT HYDE: No, they haven't, Your Honor.

THE COURT: Are you pleading guilty to protect anyone?

DEFENDANT HYDE: No, I am not.

THE COURT: Are you being paid by anyone to enter a guilty plea?

DEFENDANT HYDE: No, I am not.

THE COURT: I have been handed two documents, one of which is the plea agreement which is dated today. And on page 8 of this document at the bottom there is a signature above the line that says Elmer Robert Hyde.

Is this your signature, Mr. Hyde? (indicating)

DEFENDANT HYDE: Yes, it is, Your Honor.

THE COURT: I have also been handed an application for permission to enter a plea of guilty. And on page 6 of this document which is also dated today's dated, there is a line that's typed in defendant and there is a signature above that.

Is this your signature, Mr. Hyde (indicating)

DEFENDANT HYDE: Yes, it is, Your Honor.

THE COURT: Other than the promises or representations that have been made that are contained in this [18] plea agreement that have been handed, has anyone promised you anything else to induce you to change your plea of guilty?

DEFENDANT HYDE: No, they haven't, Your Honor.

THE COURT: Do you understand that the offenses to which you're pleading guilty are felony offenses?

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: And do you also understand that if I accept your guilty plea, you will be adjudged guilty of these felony offenses and such adjudications may deprive you of certain valuable civil rights, such as the right to vote, the right to hold public office, the right to serve on a jury, and the right to possess any kind of a firearm?

DEFENDANT HYDE: Yes, I understand that, Your Honor.

THE COURT: Do you also understand that under the Sentencing Reform Act of 1984, the United States Sentencing Commission has issued guidelines for courts to follow in determining the most appropriate sentence in a criminal case?

DEFENDANT HYDE: Yes, I understand that, Your Honor.

THE COURT: Have you had an adequate opportunity to discuss with your advisory counsel how the sentencing guidelines might apply to your case?

DEFENDANT HYDE: Yes, I have, Your Honor.

THE COURT: Do you understand that the Court will not be able to determine finally what the appropriate sentence is until after the Probation Department has completed the [19] presentence report, and you and the Government have had an opportunity to challenge the facts in the presentence report. It will only be at that point that the court will be able to determine the appropriate sentence for your case.

Do you understand that?

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: Do you also understand that parole has been abolished, and if you are sentenced to prison you would not be released on parole?

DEFENDANT HYDE: Yes, I understand that.

THE COURT: As part of the sentence, the Government is going to be recommending that Counts 5 through 8 be dismissed; is that correct?

MR. LEVIN: That's correct, Your Honor.

THE COURT: Is that the only promise that is being made other than the fact that no additional charges will be filed as a result of the plea to Count 1?

MR. LEVIN: No additional charges. We have also agreed that no additional charges will be filed for certain other schemes the defendant committed that are set forth in the plea agreement. No charges will be filed against him for Social Security, false statement that he allegedly committed. And we have also agreed—reached certain agreement with him regarding the application of the guidelines to this offense which are set forth in the plea agreement as well.

[20] THE COURT: You have here that the—that it's pursuant to 11(e)(1)(B), but I think it is 11(e)(1)(A). Let me check.

MR. LEVIN: Oh.

Probably is more (e)(1)(A).

THE COURT: Because you are not making any recommendations with respect to sentences.

MR. LEVIN: We haven't agreed as far as what our recommendation will be, right.

THE COURT: Mr. Hyde, do you understand that the Government, as part of the plea agreement, has agreed to dismiss certain counts contained in the indictment?

DEFENDANT HYDE: Yes, I understand that, Your Honor.

THE COURT: Do you also understand that I may accept or reject this agreement today, or I may reserve ruling to accept or reject the plea agreement pending completion of the presentence report?

DEFENDANT HYDE: I understand that, Your Honor.

THE COURT: Okay. And with respect to any recommendation of the Government, do you also understand

that that is basically all it is, is a recommendation. The Court is always free to accept or reject a recommendation of the Government?

DEFENDANT HYDE: I understand that, Your Honor.

THE COURT: Should the Court—Mr. Hyde, have you [21] had an opportunity to review the indictment with your advisory counsel?

DEFENDANT HYDE: Yes, I have, Your Honor.

THE COURT: Would you like me to read the indictment pending against you or do you waive reading of the indictment?

DEFENDANT HYDE: I would waive the reading of the indictment, Your Honor.

THE COURT: Do you understand what you're charged with in. . . Let's start with Count 1 of the indictment?

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: Will you tell me in your own words what you have done that leads you to conclude that you should plead guilty to Count 1 of the indictment?

DEFENDANT HYDE: Well, basically made false statements, material facts that people relied on and they were defrauded from . . . by relying on that . . . misrepresentations that I made.

THE COURT: That's pretty general. Can you be a little more specific please?

DEFENDANT HYDE: Basically the misrepresentations, Your Honor, I represented to these people that I was able to obtain funding for certain financial businesses or ventures, and then I was unable to produce that. I couldn't produce that money and I didn't really think I could to begin with, but I was just unable to produce that money.

[22] THE COURT: Let me start with . . . Mr. Levin, will you please indicate for the record the evidence that the Government is prepared to present with respect to Count 1 if this matter would go to trial?

MR. LEVIN: Your Honor, if the matter were to go to trial we would be prepared to show that in the fall of 1987, the defendant placed newspaper ads in the San Francisco paper indicating that—or soliciting people who were interested in working as loan brokers and indicating that they could make very large salaries if they worked as loan brokers, in the hundred thousand dollars or more per year they could make.

People who responded to the ad would testify that they met with Mr. Hyde and spoke with Mr. Hyde, and Mr. Hyde indicated to them that he was very experienced and successful in the area of money brokering, that he had been working in that area for approximately forty years, had done—had funded I think four thousand or so loans, and had very good sources of money.

They would also testify that he offered them the opportunity to work as loan brokers for them in return for them paying a fee of which varied in amount depending upon the return that they were to get from their activities.

The people would testify that they, based on the representations that Mr. Hyde made to them about his prior experience and success, they joined on with money brokers, and [23] worked for Mr. Hyde in money brokers, and that they then went out and based on the representations, they solicited loan applicants who had to pay a twenty-five hundred dollar fee in order to have their loan application considered by Money Brokers Association.

We would introduce bank records which would show that the money the loan applicants paid to money brokers was deposited by Mr. Hyde into one of two accounts that he had established, and that the money thereafter was used by Mr. Hyde for personal purposes and some of the money was returned to the loan brokers as commission or salaries.

We would be prepared to prove that the representations Mr. Hyde made about his background and his success were inaccurate and false, and that to the extent we could

reestablish his employment record over the past thirty years, it would reflect sporadic employment as a pool or insulation salesman. There was some period of time where he was in prison, approximately eight years since 1960, but the evidence would indicate no period of time where he was operating that we are aware of that he was operating as a successful money broker.

Based on the representations that he made, and the money brokers that he was able to solicit and the money brokers who joined him, we would establish in count 1 that a Joseph Quinlan who was interested in financing a funeral home in the [24] Chicago area was contacted by a co-broker that Mr. Hyde had engaged, a Mr. David Whitehead in Chicago. And that Mr. Quinlan submitted a loan application, and then on January 13th, approximately January 13th, 1988, Mr. Quinlan received in the U.S. mail a letter of intent purportedly signed by a Nathan Silverman of Bancorp, Ltd. reflecting the supposed approval of his loan, the loan that he had requested.

We would prove through the FBI investigation of public source records such as the secretary of state, that as far as we can determine Bancorp Ltd. does not exist, and did not exist at the time in the state of California, and that our investigation has also disclosed that there was no Nathan Silverman who existed who was in the business of money brokering.

We would also introduce evidence that there are similarities between the signature of Nathan Silverman on that letter and Mr. Hyde's signature as well.

We would also introduce evidence that Mr. Quinlan never received the loan that was referred to in that letter, and never received a refund of the money that he had paid, that is, the twenty-five hundred dollars.

We would introduce evidence that Mr. Hyde after receiving a number of fees from different loan applicants and co-brokers, moved down to Tustin, California and stayed in that area for a month or so, and then in early

March of 1988, he [25] left that area without any notice to the co-brokers or the loan applicants, and went to the New York area.

And that is, in a nutshell, what we would be prepared to prove.

THE COURT: For Count 1.

MR. LEVIN: For Count 1.

THE COURT: Okay. Mr. Hyde, were you able to hear everything Mr. Levin indicated he would be prepared to prove if this matter were to go to trial with respect to Count 1?

DEFENDANT HYDE: Yes. I am sorry I had to cough while he was doing that, Your Honor. I heard everything he said.

THE COURT: Are there any corrections or modifications or anything concerning what he said that you dispute at this point, or is what he said basically accurate with respect to—

DEFENDANT HYDE: Basically I would say it's accurate, Your Honor.

THE COURT: Now with respect to Count 2 of the indictment, if you will tell me in your own words what you did that leads you to conclude that you should plead guilty to Count 2?

DEFENDANT HYDE: On Count 2, Your Honor, I'm not exactly sure who is involved. I believe it was one of the brokers that was working with me. And that he did obtain a [26] five thousand dollar check from Mr. William Allard, and I did deposit that in the—in our bank. I'm not really certain of how that was used or distributed in the business some way. But we did receive that money.

THE COURT: You mean subsequent to your depositing it in the account, you are not certain what you did with the proceeds?

DEFENDANT HYDE: Yes. It was back in the business, I mean—

THE COURT: Excuse me.

DEFENDANT HYDE: I'm sorry?

THE COURT: I didn't mean to interrupt you.

DEFENDANT HYDE: I'm not quite sure on here without being able to get into the records and find out where the money went, but we did get the money and did deposit it in the account.

THE COURT: You received the money from across state lines. Where did you receive the money?

DEFENDANT HYDE: In other words, I believe this was mailed from the Chicago area, I believe. Illinois, yes, Your Honor.

THE COURT: Mr. Levin, would you please indicate for the record what the government would be prepared to prove as to Count 2 if this matter went to trial?

MR. LEVIN: Yes, Your Honor.

[27] In addition to what I have already stated about general background of the offense, specifically with reference to Count 2, we would be prepared to show that two of the individuals that Mr. Hyde engaged as co-brokers in this enterprise were Mr. Neil Elder and David Whitehead.

Mr. David Whitehead resided in the Chicago area and solicited loan applicants on behalf of Money Brokers Association.

We would prove that one of the loan applicants who expressed an interest in getting a loan through Money Brokers was a man named William Allard, and that Mr. Elder, with Mr. Hyde's knowledge, went to Chicago in order to meet with Mr. Allard and receive the loan application fee of five thousand dollars.

We would testify that Mr. Elder did, in fact, go to Chicago, he met with Mr. Allard, he had him fill out Money Brokers' documents including a financial service agreement. He received the check from Mr. Allard in the amount of five thousand dollars that was written on an Illinois account.

Mr. Elder then took that five thousand dollars back to California, where he gave the check to Mr. Hyde and told Mr. Hyde what he had done in Chicago.

We would further prove that that five thousand dollar check was deposited into the Money Brokers Association account at the First Interstate Bank in San Ramon. And as I have [28] indicated previously, the proceeds from the bank accounts were used to some extent by Mr. Hyde for personal purposes, and to some extent money was redistributed to co-brokers.

Mr. Allard would testify that he never got the loan, he did not, contrary to the representations that were made to him, he never received a refund for the five thousand dollars either.

THE COURT: Mr. Hyde, were you able to hear what Mr. Levin indicated that he would be prepared to prove if this matter were to go to trial with respect to Count 2?

DEFENDANT HYDE: Yes, Ma'am.

THE COURT: Are there any corrections, or additions, or modifications you would like to make to what he said, or do you have any dispute with what he says that you did with respect to Count 2?

DEFENDANT HYDE: I think that's basically true, Your Honor.

THE COURT: With respect to Count 3, if you would please indicate for the record what you did that leads you to conclude that you should plead guilty to Count 3?

DEFENDANT HYDE: Are you asking me, Your Honor.

THE COURT: Yes, Mr. Hyde, please.

DEFENDANT HYDE: Yes. Here again, I know that we received a check from a Mr. Fajardo, but I can't follow it at this point where it went. It went into the account and it was [29] disbursed between brokers, myself, and the business.

So we did—we did receive that check from Mr. Fajardo here, and I am sorry that I can't tell you exactly where that five thousand went.

THE COURT: You did receive the check from Mr. Fajardo in the amount of five thousand dollars?

DEFENDANT HYDE: Yes, Your Honor.

THE COURT: And you deposited it in the account?

DEFENDANT HYDE: Yes, I did, Your Honor.

THE COURT: Was this a check that you also received in the mail?

DEFENDANT HYDE: Well, it obviously came from Michigan, and so it had to come by some process, more likely by mail, Your Honor.

THE COURT: Okay. Mr. —and you say some of it was divided between you and—

DEFENDANT HYDE: Associate brokers and business expense.

THE COURT: Mr. Levin, if you will please indicate for the record what the Government would be prepared to prove with respect to Count 3?

MR. LEVIN: Yes, Your Honor.

In addition to the background that I have previously given on the other two counts, we would be prepared to show that Mr. Fajardo, Rolando Fajardo was a loan applicant who [30] responded to the solicitations in the newspaper that were placed in the Chicago area by Money Brokers associate David Whitehead. That with knowledge and consent of Mr. Hyde, Neil Elder traveled to the Chicago area on a couple of occasions to meet with Mr. Fajardo and the other loan applicants in Chicago and to execute financial service agreements with them as well as to receive their loan application fees.

We—Mr. Elder would testify that on approximately January 19th of 1988, with Mr. Hyde's knowledge and consent, he traveled to the Chicago area. He met with Mr. Fajardo. He had Mr. Fajardo execute a financial service agreement and he received a five thousand dollar

check as an application—loan application fee that Mr. Fajardo had written on an account at the ~~MEDF&M~~ Bank in Michigan, which check was payable to Money Brokers.

Mr. Elder would testify that he took that check back to California, that he gave it to Mr. Hyde, and the evidence would show that Mr. Hyde deposited that check into a Money Brokers Association account at First Interstate Bank in San Ramon. And as I have indicated previously, the funds were disbursed to Mr. Hyde for personal purposes as well as some of it was redistributed to co-brokers.

THE COURT: Hr. Hyde, have you been able to hear what Mr. Levin indicates the Government would be prepared to prove if this matter went to trial with respect to Count 3?

[31] DEFENDANT HYDE: Yes, Your Honor, I have heard and it's basically correct.

MR. LEVIN: Let me add on Count 3, once again, Mr. Fajardo indicate that contrary to the representations made to him, he never got a refund of his loan and the loan was never funded.

THE COURT: Okay.

Mr. Hyde, with respect to the additional part, did you have any corrections or any dispute with that

DEFENDANT HYDE: That is correct, Your Honor.

THE COURT: And finally with respect to Count 4, Mr. Hyde, if you could please indicate for the record what you did that leads you to conclude that you should plead guilty to Count 4?

DEFENDANT HYDE: Basically the same thing, Your Honor, in another individual here of twenty-five hundred dollars from a company in Campbell, California. And it was deposited to my account.

And here again, it was disbursed through other associate brokers, myself, and business expenses, things of that line, Your Honor.

THE COURT: Mr. Levin, will you please indicate for the record what the Government would prove with respect to Count 4?

MR. LEVIN: Yes, Your Honor.

[32] With respect to Count 4, in addition to what I have already given as the background of the other three counts, we would prove that in response to the solicitations that were made in the San Francisco area by Money Brokers Association, an individual who was interested in financing and starting a truck stop and who was operating under the business name of TRK-INN Enterprises of Campbell, California, was or made contact with one of the co-brokers of Money Brokers Association.

And that co-broker, based on the information they had received from Mr. Hyde, made representations to the TRK-INN Enterprises individuals regarding Money Brokers Association and money brokers—and what funding was available through Money Brokers Association.

Based on those representations, the individuals who were identified with TRK-INN Enterprises wrote out a twenty-five hundred dollar check as a loan application fee, and they filled out the appropriate paperwork, and they mailed it to the office of Money Brokers Association in the United States mail in San Francisco, California.

Once again, we would prove that these individuals did not get the loan that they were applying for at the time and the twenty-five hundred dollars as far as we can ascertain was not refunded to them by Money Brokers Association.

THE COURT: Mr. Hyde, were you able to hear what Mr. Levin indicates the Government would prove with respect to [33] Count 4 if this matter went to trial?

DEFENDANT HYDE: Yes. That is also basically correct, Your Honor.

THE COURT: Okay. And you said you have no dispute with what he said with respect to Count 4?

DEFENDANT HYDE: No, I do not, Your Honor.

THE COURT: Okay. Did you commit these crimes, Mr. Hyde?

DEFENDANT HYDE: Yes, Your Honor, I did.

THE COURT: Do you understand that the maximum penalty which may be imposed with respect to Counts 1 and Count 4, which are both mail fraud sections which allege violation of Title 18, United States Code, Section 1341, the maximum penalty for each of these counts is five years imprisonment, two hundred fifty thousand dollar fine or both, fifty dollar special assessment and up to three years supervised release?

DEFENDANT HYDE: Well, Your Honor, I'm not quite clear on that. I was looking at the guideline levels as what appears to be—we have agreed on offense level 17, and looking at the guideline chart on that, I understand what that would mean if the Court were to—

THE COURT: Let me tell you, as I indicated first of all, with respect to the application of the sentencing guidelines, the Court will not be able to determine finally what the applicable guideline range is nor what the specific [34] sentence shall be until after you all have had an opportunity to review the presentence report, and challenge whatever the facts are in the report, then I will be able to determine the appropriate guideline sentence.

What I am telling you now is the maximum possible penalty, which includes the statutory penalties and the statutory fines which may be greater than you will end up with, but you need to understand what the maximum penalties are.

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: So with respect to the mail fraud section, which are alleged in Count 1 and Count 4, the maximum penalty for each of these violations is five years in prison, two hundred fifty thousand dollar fine or both, plus a fifty dollar special assessment for each, and up to three years supervised release for each count.

Do you understand that?

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: Do you also understand that with respect to Counts 2 and 3, which are the counts which allege violations of Title 18, United States Code, 2315, which is receipt of property of a value of at least five thousand dollars, which have crossed the state boundary after being taken by fraud, the maximum penalty for each of these violations is ten years imprisonment, a two hundred fifty thousand dollar fine or both, fifty dollar special assessment and up to three years [35] supervised release for each.

Do you understand that?

DEFENDANT HYDE: Yes, Your Honor.

THE COURT: So looking at it with respect to Counts 1 and through 4 cumulatively, taken together, the maximum penalty on all four counts is thirty years imprisonment, one million dollar fine, two hundred dollar special assessment, and up to twelve years of supervised release.

Do you understand that?

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: Do you also understand that the Court is required to order you to make restitution to any victim which may have—who may have sustained a loss as a result of your behavior, unless the Court provides specific reasons on the record for not ordering you to do so.

Do you understand that?

DEFENDANT HYDE: Yes, I do, Your Honor.

THE COURT: Are you pleading guilty because you are, in fact, guilty of these charges?

DEFENDANT HYDE: Yes, I am, Your Honor.

THE COURT: Let me ask you. At this point you don't know what the amount of restitution is. Is that subject to be determined?

MR. LEVIN: That's right, Your Honor.

THE COURT: Now, before I—before I accept your [36] guilty plea to these charges, Mr. Hyde, I do have a couple of questions I want to ask you.

You have been represented up to this date by Mr. Stepanian, who is at this point your advisory counsel, although you are representing yourself; is that correct?

DEFENDANT HYDE: That's correct, Your Honor.

THE COURT: And up to today and including your representing yourself and Mr. Stepanian providing you with advice, has Mr. Stepanian given you all the legal advice you have needed or wanted?

DEFENDANT HYDE: Mr. Stepanian has been more than anybody can ask for in the way of a lawyer and a friend. He has done everything way beyond the call of duty to help me, Your Honor.

THE COURT: Okay. Has Mr. Stepanian done anything that you have previously objected to or object to now?

DEFENDANT HYDE: Not at all. He has been just wonderful.

THE COURT: So you're satisfied with the legal support and representation from Mr. Stepanian who is currently your advisory counsel?

DEFENDANT HYDE: Absolutely, Your Honor.

THE COURT: Do you need to obtain any further legal advice from your advisory counsel before the Court accepts your guilty pleas?

[37] DEFENDANT HYDE: I think I have been very well advised, Your Honor, by Mr. Stepanian. He's a credit to the Court, I might add.

THE COURT: Okay.

Mr. Hyde, how do you plead to Count 1 of the indictment which alleges a violation of Title 18, United States Code, Section 1341, mail fraud; guilty or not guilty?

DEFENDANT HYDE: Guilty, Your Honor.

THE COURT: With respect to Count 2, how do you plead to a violation of Title 18, United States Code, Section 2315, which alleges your receiving property of a value of at least five thousand dollars which crossed state boundary after being taken by fraud; guilty or not guilty?

DEFENDANT HYDE: Guilty, Your Honor.

THE COURT: And how do you plead to a violation of—excuse me, Count 3 in the indictment, which is also a violation of Title 18, United States Code, Section 2315, receiving property of a value of at least five thousand dollars which has crossed the state boundary after being taken by fraud; guilty or not guilty?

DEFENDANT HYDE: Guilty, Your Honor.

THE COURT: Finally, how do you plead to Count 4 of the indictment, which alleges violation of Title 18, United States Code, Section 1341, mail fraud; guilty or not guilty?

DEFENDANT HYDE: Guilty, Your Honor.

[36] THE COURT: These sections also charge here violation of Section 2(b), willfully causing an offense against the United States.

MR. LEVIN: That's right, Your Honor.

THE COURT: Mr. Hyde, how do you plead to violation of Title 18, United States Code, Section 2(b) willfully causing an offense against the United States; guilty or not guilty?

DEFENDANT HYDE: Yes, Your Honor, I willfully did commit the crimes.

THE COURT: The Court finds the defendant has knowingly, voluntarily, and intelligently with the advice of his advisory counsel entered a guilty plea.

The Court further finds that the elements required to support a conviction under Title 18, United States Code, Section 1341, 2315, and 2(b) have been satisfied.

The Court further finds that there is a sufficient factual basis to support the plea.

The Court accepts the guilty plea. The Court reserves ruling on whether to accept the plea agreement pending completion of the presentence report.

Is there anything further at this point before setting the matter for judgment and sentencing?

MR. STEPANIAN: I have spoken—had a short opportunity to speak to the acting supervisor of the marshals,

Your Honor, and we would request the Court, ask Mr. Hyde to go [39] back to Pleasanton. He was going to be housed here in San Francisco during trial.

THE COURT: Okay.

DEFENDANT HYDE: Thank you, Your Honor.

THE COURT: Do you need an order for that?

DEPUTY MARSHAL: No.

MR. STEPANIAN: Thank you, Your Honor.

DEFENDANT HYDE: Thank you, Your Honor.

MR. STEPANIAN: Nothing else, Your Honor.

Earliest—I don't know what probation, but if we can do it early period that would be acceptable.

THE COURT: February 1st, 1994.

MR. STEPANIAN: One moment, please.

That—may we have the 8th? I'm not here on the 1st.

THE COURT: Mr. Hyde, is that agreeable?

DEFENDANT HYDE: That is agreeable, Your Honor.

THE COURT: February 8th?

DEFENDANT HYDE: Yes, Your Honor.

THE COURT: February 8th, 1994 at 1:30 in the afternoon for judgment and sentencing.

MR. STEPANIAN: Thank you.

MR. LEVIN: Thank you, Your Honor.

DEFENDANT HYDE: Thank you.

(Proceedings adjourned)

[Filed Jan. 10, 1994]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted in Printing]

**MOTION TO WITHDRAW GUILTY PLEA  
GIVEN UNDER "CHOICE OF EVIL" DURESS  
PURSUANT TO F.R.C.P. RULE 32(d)**

To: The Honorable Sandra Brown Armstrong, Judge:

Comes now, Robert E. Hyde, defendant, in Pro Se to move this Honorable Court to withdraw his guilty plea for the following "fair and just reason," that is:

I pled guilty to crimes I did *NOT* commit because;  
I was in **FEAR FOR MY WIFE'S LIFE.**

**FACTS OF THIS MATTER**

Justice Department employees intentionally put the fear of death in my wife's mind to the extent I was forced to plead guilty to crimes I did not, in fact, commit, in order to save her life. For nearly 1½ years there has been ongoing constantly increasing acts of harassment, intimidation, threats, and physical as well as mental acts endangering my wife's life caused by these Justice Department employees and others they recruited and encouraged to threaten her life. At home, at work, wherever she is, or goes, she goes in fear. Even when she comes to Court (which has been everytime) when I have to appear, she fears she will be arrested and imprisoned to put pressure on me to plead guilty to their false charges. Each time she answers the phone it is with fear for her life. We both had and still have great fear for her life and it has not ended with my guilty plea.

The prosecution has spent nearly a year and a half and several hundred thousands of dollars, I am told, on

a "fishing expedition" to bring more false charges against me that increased the pressure on my wife until, fearing for her life, I pleaded guilty to whatever crimes they wanted me to plead to, if they would leave her alone. They have not left her alone, even after I pled guilty.

I had the "Choice of 2 Evils" so I had to plead guilty I believe any man would have to plead guilty to anything to save the life of the woman he loves—I know I could not do less.

As of now, my wife is still being harassed, and in addition to all that she is now suffering such feelings of guilt, sorrow, despair, and remorse for my pleading guilty she is becoming sick, both physically and mentally, to such extent she has begged me to withdraw my false plea and tell the truth—I am innocent of the charges. We have talked and decided to throw ourselves on the goodness and mercy of this Court.

Wherefore, I pray in your wisdom you can see that I am an old, sick, dying man, that matters less my fate than concern for my wife's sake, that you will allow me to withdraw my false plea, made under the duress of evil, and allow me the opportunity to prove my innocence at trial of this matter, as law and justice should require.

I most respectfully submit our cause to you.

Dated: December 23, 1993.

Thank you,

/s/ Bob Hyde  
ROBERT E. HYDE

Since I am imprisoned with no means to submit this motion in proper form I beg the Court to allow me to present memorandum, points and authorities later and ask the Clerk to please make the necessary copies and serve the interested parties. Thank you all & God bless you. Wishing you all a Merry Christmas and Happy New Year.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted in Printing]

TRANSCRIPT OF PROCEEDINGS

[March 15, 1994]

\* \* \* \*

[3] THE DEFENDANT: I'm sorry, Your Honor. What was that?

THE COURT: With respect to the guilty plea—

Let me ask you this: I do want to ask you, Mr. Hyde, in your motion to withdraw the guilty plea, you do not identify the person or persons who allegedly threatened your wife

Who are these people that you're [sic] refer to.

THE DEFENDANT: Your Honor, from the beginning, there was an FBI agent, Robert Schenke. Mr. Schenke has spent hours alone with my wife in her apartment, not only hounding her, but sexually harassing her and mentally raping her and driving her to the point of near insanity, in total fear for her life if she didn't get me to plead guilty to these false charges.

So I filed that complaint with the Federal Bureau of Investigation about Mr. Schenke's actions, not only against my wife, but also for his perjury in this case, Your Honor, originating in this case.

This case stems from a small business I had in 1987, which was duly licensed, and there were no complaints against the company or myself at the time that I sold the company. And four years later, when I had no longer seen the new owner, had no contact whatsoever during that four years, and there was an indictment that was

based upon the man who actually [4] bought the business—

THE COURT: I don't want to get into any of that. I just want to find out. As a basis for your requesting to withdraw your guilty plea, you have made a lot of assertions, but I didn't have any specific information.

THE DEFENDANT: Specifically, it's the FBI agent, Robert Schenke, told my wife that she would be arrested if I didn't plead guilty, if she didn't cooperate in every way with him.

THE COURT: You are saying these threats were made before you entered your guilty plea?

THE DEFENDANT: They had been made, yes. They have been made several times, Your Honor, along the way. Another thing—

THE COURT: Several times before you entered your guilty plea?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I did specifically question you about that when you entered your guilty plea, and you recall, if you do recall, when I asked you the question if you were pleading guilty to protect anyone or if anyone threatened you to get you to enter your guilty plea. My recollection is your answer to both those questions was no.

\* \* \* \* \*

[6] THE DEFENDANT: That's true, Your Honor.

THE COURT: So why should I accept what you're saying today?

THE DEFENDANT: Because this is the truth.

THE COURT: How do I know which one is the truth?

THE DEFENDANT: Obviously, Your Honor, somebody doesn't pass up a deal for one count for five years and plead guilty to four counts for 30 years, unless there is something drastically wrong.

The night before I came here to go to trial I was informed I was going to be moved from the Federal Detention Center in Pleasanton down to Bryant Street, where I wouldn't have access to a law library, and we're going to make it a lot tougher for you and we're going to arrest your wife.

My wife has shown up in court everytime that I've come to court. She has done that in total fear and she has her daughter with her and is present in court right now, and she can verify, if you would like to put her under oath, that she has been sexually harassed here by Mr. Stepanian. She has been humiliated. She has been treated with the most violent vicious type of treatment from the FBI agent from the beginning all the way through to get me to plead guilty to these perjured charges that I can prove were perjured very easily with my witnesses at trial.

\* \* \* \* \*

[34] THE DEFENDANT: I understand that.

THE COURT: That is your desire?

THE DEFENDANT: Sorry?

THE COURT: That is your desire?

THE DEFENDANT: Yes, it is.

THE COURT: Okay. Then your request is granted.

THE DEFENDANT: Sorry?

THE COURT: Your request is granted.

THE DEFENDANT: Thank you. I have one more, Your Honor. Since we only have the matter of sentencing left, that we waive the probation sentencing investigative report and ask for an immediate sentence.

THE COURT: Today?

THE DEFENDANT: Yes.

THE COURT: I'm not in a position to do that. First of all, I still have your motion outstanding.

Do you want to withdraw your motion.

THE DEFENDANT: I will withdraw my motion.

THE COURT: You want to withdraw your motion to withdraw your guilty plea?

THE DEFENDANT: There's no way I can satisfy the Court.

THE COURT: Well, that's your choice. I'm giving you a week. Whether you withdraw your motion to withdraw the guilty plea or not, I'm not inclined to sentence you today. I [35] don't generally sentence people without a presentence report. I find the information in a presentence report invaluable in making some of the decisions that I have to make, particularly when the exposure is as significant as yours. So I wouldn't be inclined.

You can still withdraw your motion if you want, and then the court—

THE DEFENDANT: I will withdraw it, but I would I ask you for the earliest possible sentencing date.

THE COURT: Have they started on the presentence report?

MR. LEVIN: He had started on it, but then he pretty much stopped pending the outcome of this. So we had a date of April 5th, but I don't think that is realistic.

THE COURT: Let's see how soon we can—well, April 5th is—

MR. LEVIN: That was the date that had been set. Mr. Carter, I think, was the probation officer.

THE COURT: That is quite a bit of time.

MR. LEVIN: Three weeks.

THE COURT: If he already started.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted in Printing]

TRANSCRIPT OF PROCEEDINGS

[June 2, 1994]

\* \* \* \* \*

[7] THE COURT: Okay. I—I'll make the legal rulings when it's appropriate.

At this point—I set today's hearing—I don't have a lot of time. I have scheduled enough time for you to bring forth the evidence that you would like to present to the court, so the court could then evaluate the law in the context of the evidence.

Because what I have so far is an unsworn, unsigned statement that is of no value to the court.

So if you have a witness, or several witnesses that you want to elicit evidence from, then call your witnesses, so the court can then hear the evidence, and I can then consider whatever evidence you present, coupled with whatever evidence Mr. Levin presents, and then . . . apply the appropriate law, and I'll issue my order.

But at this juncture, if you have witnesses, why don't you call your first witness.

DEFENDANT HYDE: Well, Your Honor, I think that's moot in view of the fact that the court erroneously took this plea under 11(e)(1)(A).

THE COURT: All right.

Do you—do you want to call any witnesses today?

DEFENDANT HYDE: No, I think there—

[8] THE COURT: Because I—at this point—after I hear the evidence, if you have some comments that you would like to make with respect to the law, that's fine.

But I did schedule a court hearing today. If you have witnesses, call them.

DEFENDANT HYDE: Well, the witnesses to this matter—we've got two different pleas here. We've got—we've got (1)(A) and then we have (e).

So we have two different pleas. So this certainly makes the thing—

THE COURT: Are you saying you don't—you don't have any witnesses that you wish to call?

DEFENDANT HYDE: I—I'd say, Your Honor, that—that under these circumstances that . . . that's really a moot question. Coercion and breach here.

And we have here on the reporter's record when you took this plea under 11(e)(1)(A), which means I have a right to withdraw the plea anyway. It's not a (B) plea. It's (A).

And you took under it under (A), Your Honor. And here's the record (displaying documents), if you would care to look at it.

THE COURT: I don't recall anything—any agreement—

DEFENDANT HYDE Right here is the record, Your Honor.

[9] THE COURT: —That you would have a right to withdraw your plea.

DEFENDANT HYDE: Here the Court says: I think it's pursuant to 11(e)(1)(B), but I think it is 11(e)(1)(A). Let me check.

Mr. Levin says: It probably is (e)(1)(A).

So under (E)(1)(A) I'm entitled to withdraw the plea, Your Honor, as a matter of law.

In other words, the Court has really—maybe just—with all due respect, Your Honor, just didn't fulfill—in addition to that, you didn't fulfill the obligation of 11

(e)(2), which means you have to inform a defendant that he cannot withdraw his plea once he's given it.

And you did not inform me of that.

MR. LEVIN: Your Honor—

DEFENDANT HYDE: So either—either way we go, it's invalid.

MR. LEVIN: Your Honor, I think I could shed some light on that issue, although I don't know that the Court wants to even address it at this point.

THE COURT: You may if you like.

MR. LEVIN: The written plea agreement, as I recall, erroneously referred to it as a plea under 11(e)(1)(B).

That is, in which the Government agrees to make a specific recommendation.

[10] THE COURT: Right.

MR. LEVIN: And if a plea is taken under that section, then the Court is obliged to advise the defendant that he may not withdraw the plea, even if the Court does not go along with the recommendation.

But the Court observed during the course of taking the plea that there was no commitment by the Government to make any particular recommendation, so it was really a plea under 11(e)(1)(A); that is, to move for dismissal of other charges.

And given that, there was no obligation of the Court to advise Mr. Hyde that if the Court didn't impose a particular sentence he could withdraw the plea, because there was no commitment by the Government to recommend any particular sentence.

THE COURT: Well. . . .

DEFENDANT HYDE: But under that (A)—

THE COURT: In that case I would have not made a statement that you—that the Court is not obliged to follow the recommendation.

But I. . . . I certainly do not concur with your analysis of that section, Mr. Hyde.

DEFENDANT HYDE: It's right here in the reporter's—

THE COURT: So to the extent that I do not concur—I understand your argument. I don't concur.

If you have witnesses that you would like to call—[11] if so, call your first witness.

DEFENDANT HYDE: I will call my wife.

Can I get your ruling on the fact on 11(e)(2) that you did not inform me?

THE CLERK: Take the witness stand.

THE COURT: Whatever you want to file, Mr. Hyde, you file it. Today is the date for a hearing—

DEFENDANT HYDE: Uh-huh.

THE COURT: —on this motion. And I—which is what I'm going to have.

Any additional requests that you have, put them in writing; the Government will respond; and the Court will issue the appropriate order.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted in Printing]

**ORDER DENYING MOTION TO  
WITHDRAW GUILTY PLEA**

[Filed July 19, 1994]

On June 2, 1994, this Court conducted an evidentiary hearing on defendant's motion to withdraw his guilty plea. After having considered the papers submitted in connection with the motion and the testimony of the witnesses at the evidentiary hearing, the Court finds that defendant's motion should be denied.<sup>1</sup>

**BACKGROUND**

Defendant Elmer Hyde was charged with masterminding and operating a bogus loan brokerage scam. Defendant effected this scheme by holding himself out as a loan broker and president of a company known as the Money Brokers Association ("MBA"). Under the guise of the MBA, defendant would promise to obtain loans on behalf

<sup>1</sup> The Court notes that defendant filed a variety of "motions" subsequent to filing his motion to withdraw his guilty plea. Defendant has styled these submissions a Motion for Dismissal of All Charges in the Interests of Justice, Petition for a Writ of Habeas Corpus, Motion to Dismiss this Case in the Best Interests of Justice, and Motion to Withdraw Breached Guilty Plea. The crux of these motions is essentially the same—namely, that the defendant should be released because he did not commit the crimes charged in the Indictment. Because these motions are duplicative of the instant motion before the Court, each of these motions is denied.

of the prospective applicants in exchange for up-front application fees. Defendant Hyde accepted the fees despite never having arranged for the financing.

The Government charged the defendant with the following violations: (1) 18 U.S.C. § 1341—mail fraud (Counts 1, 4, 5); 18 U.S.C. § 1343—wire fraud (Counts 6, 7, 8); (3) 18 U.S.C. § 2315—receiving stolen property (Counts 2, 3); and (4) 18 U.S.C. § 2(b)—wilfully causing an offense against the United States (Counts 1-8). The core allegations are contained in Count I. The remaining Counts charge defendant with various statutory violations for conduct related to the scheme.

Trial was set to commence on November 29, 1993. On the first day of trial but prior to the commencement of any proceedings, the Government and the defendant informed the Court that they were in the process of negotiating a plea agreement. Later that same day, defendant pled guilty to Counts I through IV of the Indictment as part of a written plea agreement filed with the Court. Before taking the defendant's plea, the Court extensively voir dired defendant pursuant to Federal Rule of Criminal Procedure 11 to verify that his change of plea was knowing, voluntary and intelligent.

On December 23, 1993, defendant filed a motion to withdraw his guilty plea on the ground that he entered his plea under duress. Specifically, defendant claims that he feared for his wife's life based on threats of harm allegedly made by the prosecutor in this case, Assistant United States Attorney Joel Levin, and other identified Justice Department employees.

On March 15, 1994, the Court conducted a hearing on defendant's motion. Defendant appeared in Court pro se with Michael Stepanian, his Court-appointed standby counsel.<sup>2</sup> During the hearing, the Court informed de-

<sup>2</sup> Also set for hearing on this date was Defendant's Renewed Motion to Dismiss for Prejudicial Delay and Defendant's Ex Parte to Remove Assistant Counsel Michael Stepanian for Sexual Harass-

fendant that he had failed to present any cognizable evidence to support his claim that his plea was coerced or was otherwise the product of duress. The Court, however, permitted defendant until March 22, 1994, to allow Mrs. Carole Hyde, defendant's wife, to submit a sworn declaration setting forth the specific factual bases for his allegation that she had been harassed by the government.

Mrs. Hyde submitted her unsworn and unsigned declaration on March 21, 1994. In that declaration, Mrs. Hyde averred that Federal Bureau of Investigations Agent Robert Schenke ("Agent Schenke") came to her home in August 1993, and acted in a "menacing manner." (See Carole Hyde Decl. ¶ 3.) She alleges that he threatened her with arrest and made unspecified "threats" concerning her job. (*Id.*, ¶ 6.) Mrs. Hyde concludes that she "did influence [defendant] him to plea (sic) guilty because of [her] fears, he was concerned for [her] safety."

On April 7, 1994, after reviewing Mrs. Hyde's declaration, this Court scheduled an evidentiary hearing on defendant's motion. The Court's Order stated, in part:

Mrs. Hyde's declaration is both vague and conclusory. Nevertheless, because there is some suggestion —however tenuous—that defendant entered his guilty plea under duress, it is important that the Court allow the parties to develop the requisite factual record from which the Court can determine, under the totality of the circumstances, whether plaintiff's plea was completely voluntary. *Iaea v. Sunn*, 800 F.2d 861, 866 (9th Cir. 1986).

Order (filed April 7, 1994) at 2. The Court set the evidentiary hearing for April 26, 1994.

On April 19, 1994, one week prior to the date scheduled for the evidentiary hearing, defendant filed a docu-

ment and Other Acts or Moral Turpitude. The Court denied the motion to dismiss but granted to motion to remove standby counsel.

ment styled as a "Request for Court's Compulsory Processes (sic) to Obtain Witnesses for Evidentiary Hearing April 26, 1994." In this document, defendant requested that the Court issue subpoenas to compel the attendance of ten witnesses for the evidentiary hearing.<sup>3</sup> The Court liberally construed this request as one made under Federal Rule of Criminal Procedure 17, which governs the issuance of subpoenas in criminal cases. Because defendant failed to make the requisite proffer required under Rule 17, the Court denied defendant's request. See Order (filed April 26, 1994). The Court, however, granted defendant leave to file an amended Rule 17(b) request with the necessary information.<sup>4</sup> The Court also ordered defendant to provide information to show his financial inability to pay the fees of the witnesses. This additional information was due by May 12, 1994. The Court vacated the evidentiary hearing set for April 26, 1994, to allow defendant sufficient time to prepare his renewed Rule 17 request.

Defendant failed to file a renewed Rule 17 request. Thus, on May 13, 1994, this Court issued an Order rescheduling the evidentiary hearing for June 2, 1994. At the hearing, defendant presented the testimony of his wife, Carole Hyde, and his daughter, Crystal Hiddleston. The Government proffered Agent Schenke. The Court took the defendant's motion to withdraw his guilty plea under submission at the close of the evidentiary hearing.

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<sup>3</sup> Included in defendant's list was Judge Patel of this Court, a Time magazine correspondent, and several federal prisoners.

<sup>4</sup> Specifically, the renewed Rule 17 request was to be accompanied by a written statement which indicated, for each witness: (a) the nature of the testimony to be elicited; (b) the relevance of such testimony to the issue of whether defendant's guilty plea was involuntary; and (c) an explanation of why the witness' testimony is necessary to the adjudication of the voluntariness issue.

## DISCUSSION

### A. Legal Standard

A defendant has no right to withdraw a guilty plea. *United States v. Castello*, 724 F.2d 813, 814 (9th Cir. 1984). Nevertheless, the Federal Rules of Criminal Procedure permit a defendant to withdraw a guilty plea prior to sentencing "upon a showing by the defendant of any fair and just reason." Fed. R. Civ. P. 32(d). The burden is on the defendant to present a "plausible reason for withdrawal." *United States v. Navarro-Flores*, 628 F.2d 1178, 1183 (9th Cir. 1980). A "change of heart" alone is insufficient. *United States v. Turner*, 898 F.2d 705, 713 (9th Cir. 1990). The court has "broad discretion" in deciding whether to allow the withdrawal of a guilty plea. *United States v. Rios-Ortiz*, 830 F.2d 1067, 1070 (9th Cir. 1987).

### B. There is No Evidence To Support Defendant's Claim of Coercion

In the present case, defendant seeks to withdraw his guilty plea because he claims it was the product of duress. A guilty plea which is the result of coercion or duress is not voluntary, and hence, is invalid. *Iaea v. Sunn*, 800 F.2d 861, 866 (9th Cir. 1986). In such cases, "[the] concern is not solely with the subjective state of mind of the defendant, but also with the constitutional acceptability of the external forces inducing the guilty plea." *Id.* While threats made against third parties are not per se coercive, they should be carefully considered by the Court in assessing the voluntariness of a plea. *See Castello*, 724 F.2d at 815. Thus, in determining voluntariness, the court looks to the "totality of the circumstances." *Iaea*, 800 F.2d at 866.

Here, defendant asserts that he was coerced into entering a guilty plea based on threats allegedly made against his wife by Agent Schenke. There is absolutely no

credible evidence to support this claim.<sup>6</sup> At the evidentiary hearing, Mrs. Hyde admitted that at no time did she advise the defendant to plead guilty on her account. She further testified that she had repeatedly urged the defendant *not* to plead guilty and that he should contest the charges in the indictment. In fact, Mrs. Hyde's last advice to the defendant was to plead not guilty.<sup>7</sup>

There is also no evidence that Agent Schenke improperly threatened or coerced Mrs. Hyde. Agent Schenke first made contact with Mrs. Hyde in August 1993, after the defendant had temporarily absconded. Agent Schenke visited Mrs. Hyde as part of his standard FBI investigation into the defendant's whereabouts. Although Mrs. Hyde testified that she felt "terrorized" and "harassed" by Agent Schenke's presence, there is no evidence that he made any threats against her other than to warn her that harboring a fugitive was illegal. In addition, Mrs. Hyde admitted on cross-examination that Agent Schenke never threatened her and that he told her there would be no problem so long as she cooperated in his investigation. In light of her in-court testimony, the Court finds that Mrs. Hyde's allegations of coercion are simply incredible.

In contrast to the paucity of evidence to support the alleged governmental coercion, defendant has repeatedly admitted his guilt while under oath. (*See Application to Enter a Guilty Plea ¶¶ 5, 23.*) Similarly, in the Application to Enter a Guilty Plea and the Plea Agreement (both filed on November 29, 1993), defendant represented to the Court that his decision to enter a guilty plea was not "forced or coerced by any threats or compulsion, direct or indirect, to [him] or any other person." (*See Applica-*

<sup>6</sup> There was also no evidence of misconduct or coercive behavior by any other person.

<sup>7</sup> Defendant's claim that he pleaded guilty at the insistence of his wife is further undermined by Mrs. Hyde's testimony that she had *no contact* with him during the plea negotiations which took place on November 29, 1993.

tion to Enter a Guilty Plea ¶ 25; Plea Agreement ¶ 10.)

Moreover, prior to accepting the defendant's change of plea, the Court conducted an lengthy voir dire of the defendant pursuant to Federal Rule of Criminal Procedure 11 to confirm that his change of plea was completely voluntary and proper. During that voir dire, The Court specifically asked defendant whether his guilty plea was in any way coerced; the defendant responded it was not:

THE COURT: Has anyone threatened you in any way to make or force you to enter a guilty plea?

DEFENDANT: No, they haven't, your honor.

THE COURT: Are you pleading guilty to protect anyone?

DEFENDANT: No, I am not.

(Reporter's Transcript at 17:2-7.) The Court is entitled to credit defendant's testimony at the Rule 11 hearing over his subsequent testimony. *See Castello*, 724 F.2d at 815.

In an attempt to discount his prior admissions of guilt to the Court, defendant testified at the evidentiary hearing that he lied to the Court at the Rule 11 hearing because his wife "begged" him to plead guilty. As for explaining his statements in the Plea Agreement and the Application to Enter a Guilty Plea, defendant claims he did not read those documents and that he would have signed anything presented to him by the Government.<sup>7</sup> Because the Court finds that the defendant lacks any semblance of credibility, the Court places no weight in

<sup>7</sup> At the evidentiary hearing, defendant admitted that he was untruthful with the Court at the time he entered his guilty plea. Defendant claimed that his dishonesty was justified because, from his perspective, everyone "lies" in these types of proceedings, including the Court and the prosecutor. The Court finds that defendant's cavalier explanation exemplifies his disturbing and blatant disregard for the truth and evidences a complete lack of credibility.

these explanations. Accordingly, based on the totality of the circumstances, the Court finds that the defendant entered his guilty plea knowingly, voluntarily and intelligently.

#### C. There Was No Error at the Rule 11 Hearing

As the evidentiary hearing, defendant raised an issue concerning the propriety of the Court's Rule 11 voir dire. Specifically, he claimed that because the Plea Agreement was entered pursuant to Federal Rule of Criminal Procedure 11(e)(1)(B), the Court erred in not advising him that he had no right to withdraw his guilty plea.

Rule 11(e) sets forth the appropriate procedure for plea agreements. Under Rule 11(e)(1), the government may do any of the following in exchange for a plea of guilty or nolo contendere:

- (A) move for dismissal of other charges; or
- (B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or
- (C) agree that a specific sentence is the appropriate disposition of the case.

Fed. R. Crim. P. 11(e)(1)(A)-(C). Rule 11(e)(2) provides that "[i]f the agreement is of the type specified in subdivision (e)(1)(B), the Court shall advise the defendant that if the court does not accept the recommendation or request the defendant nevertheless has no right to withdraw the plea."

The instant Plea Agreement indicates that it is pursuant to Rule 11(e)(1)(B). However, counsel for the Government explained at the hearing that this was a typographical error, and that the Agreement should have indicated Rule 11(e)(1)(A). The Court has reviewed the Plea

Agreement and concurs with the Government. At paragraph 1 of the Plea Agreement, the Government expressly agreed to dismiss Count V through VIII of the Indictment in exchange for his guilty plea as to Counts I through IV. The Government also agreed that it would not bring any additional charges against the defendant based on his operation of or involvement in certain other fraudulent activities. (Plea Agreement ¶ 3.) There are no promises by the government in the Plea Agreement that it would make a recommendation, or agree not to oppose the defendant's request, for a particular sentence. Thus, the Court concludes that defendant's claim of error as a basis for withdrawing his guilty plea is without merit.

#### CONCLUSION

The record before the Court is devoid of any suggestion that defendant's guilty plea was in anyway coerced. Defendant's claim of coercion is nothing more than an attempt to avoid the consequences of his criminal conduct. Accordingly,

#### IT IS HEREBY ORDERED THAT:

(1) Defendant's motion to withdraw his guilty plea is DENIED.

(2) Defendant's Judgment and Sentencing shall take on October 4, 1994, at 1:30 p.m., in Courtroom 2 of the United States Courthouse, 450 Golden Gate Avenue, 17th Floor, San Francisco, California, 94102.

#### IT IS SO ORDERED.

DATED: July 18, 1994

/s/ Saundra B. Armstrong  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

#### UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted in Printing]

#### JUDGMENT IN A CRIMINAL CASE

[Filed Mar. 7, 1995]

#### THE DEFENDANT:

pleaded guilty to count(s) ONE THRU FOUR OF THE INDICTMENT.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. §§ 1841 and 2(b) Mail Fraud and Willfully Causing an Offense Against the United States		Sept. 18, 1988	One
18 U.S.C. §§ 2315 and 2(b) Receiving Stolen Property and Willfully Causing an Offense Against the United States		Jan. 6, 1988	Two
18 U.S.C. §§ 2315 and 2(b) Receiving Stolen Property and Willfully Causing an Offense Against the United States		Jan. 25, 1988	Three
18 U.S.C. §§ 1841 and 2(b) Mail Fraud and Willfully Causing an Offense Against the United States		Feb. 3, 1988	Four

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Count(s) FIVE THRU EIGHT OF THE INDICTMENT (are) dismissed on the motion of the United States.

It is ordered that the defendant shall pay a special assessment of \$200.00, for count(s) ONE THRU FOUR OF THE INDICTMENT, which shall be due  immediately  as follows:

**IT IS FURTHER ORDERED** that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, and special assessments imposed by this judgment are fully paid.

Entered in Criminal Docket 3-7, 1995

Defendant's Soc. Sec. No.:	February 28, 1996
019-12-3419	Date of Imposition of Sentence
Defendant's Date of Birth:	
8-8-21	/s/ [Illegible]
Defendant's Mailing Address:	Signature of Judicial Officer
U.S. Marshall Prisoner # 27907-048	SAUNDRA BROWN ARMSTRONG
Defendant's Residence Address:	U.S. District Judge
Same as Above	Name & Title of Judicial Officer
	3-6-95
	Date

#### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of thirty (30) months on each of Counts One through Four to be served concurrently.

The defendant is remanded to the custody of the United States marshal.

#### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

*While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:*

- The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
- The defendant shall not possess a firearm or destructive device.

Defendant shall submit his person, place of residence or any vehicle under his control to a search by the U.S. Probation Officer at any time with or without a search warrant;

Defendant shall refrain from incurring new credit charges or opening additional lines of credit without the approval of the U.S. Probation Officer unless he is in compliance with the payment schedule established by the U.S. Probation Officer;

Defendant shall provide the U.S. Probation Officer with access to any requested financial information;

Defendant shall not occupy a position of financial trust or responsibility without the authorization of the U.S. Probation Officer;

Defendant shall pay any fine, restitution and special assessment imposed by this judgment as directed by the U.S. Probation Officer.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

- 10) the defendant shall permit a probation officer to visit his or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

### FINE

The defendant shall pay a fine of \$5,000.00. The fine includes any costs of incarceration and/or supervision.

The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

- The interest requirement is waived.
- in installments according to the following schedule of payments:

As directed by the U.S. Probation Officer

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

## RESTITUTION AND FORFEITURE

## RESTITUTION

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
United States Attorney 450 Golden Gate Ave. San Francisco, CA 94124	\$477,990.90

Payments of restitution are to be made to:

- the payee(s).
- in installments according to the following schedule of payments:

At the direction of the U.S. Probation Officer

## STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level: 17

Criminal History Category: I

Imprisonment Range: 24 to 30 months

Supervised Release Range: 2 to 3 years

Fine Range: \$5,000.00 to \$50,000.00

- Fine is waived or is below guideline range, because of the defendant's inability to pay.

Restitution: \$477,990.00

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

SEE STATEMENT OF REASONS